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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1969.

No. [redacted] 257

GENERAL METAL PRODUCTS COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals
For the Sixth Circuit.

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June 1969.

ST. LOUIS LAW PRINTING CO., INC., 411-15 N. Eighth St., 63101. CEntral 1-4477.

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GENERAL METAL PRODUCTS COMPANY,
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NATIONAL LABOR RELATIONS BOARD,
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PETITION FOR A WRIT OF CERTIORARI
To the United States Circuit Court of Appeals For the Sixth Circuit.

Petitioner, General Metal Products Company, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on April 11, 1969.

CITATION TO OPINION BELOW.

The opinion of the Court of Appeals, printed in the Appendix attached hereto, has not yet been officially reported (Appendix B).

JURISDICTION.

The judgment of the Court of Appeals was entered on April 11, 1969. The jurisdiction of this Court is invoked pursuant to 28 U. S. C., Section 1254 (1).

STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C., Secs. 151 *et seq.*), are set out in the Appendix attached hereto (Appendix A).

QUESTIONS PRESENTED.

1. Whether the Petitioner is responsible for the actions of five Humboldt, Tennessee, townspeople who were neither employees nor managers of the Petitioner and guilty of unfair labor practices by reason of the actions of said townspeople?

2. Whether statements made by five Humboldt, Tennessee, townspeople were coercive and violative of Section 8 (a) (1) of the National Labor Relations Act where the employees themselves to whom the statements were made were not coerced?

STATEMENT.

General Metal Products Company, the Petitioner herein, has operated a plant in St. Louis, Missouri, since January 24, 1889 (J. A. 115a). The St. Louis plant has been organized by the International Association of Machinists and Aerospace Workers, AFL-CIO, since 1941 (J. A. 101a). During the more than 25 years of organization by the Union at the St. Louis plant, relations between the Company and the Union have been excellent (J. A. 112a).

When the Petitioner became aware that its markets were moving southward and it faced the potential loss of at least a half million dollars worth of business, it decided that, rather than continue to expand the St. Louis facilities, which were nearing the expansion limit, it would be best to follow the markets that were moving south and create an operation which could be greatly expanded to take advantage of the new markets (J. A. 102a). Humboldt, Tennessee, was selected as the site of the new operation, mainly through negotiations with J. Frank Warmath, a local attorney and a member of the local and State Industrial Development Commission. Prior to any contractual obligation, however, the Petitioner met with the Union's business representative and shop committee in St. Louis and received the Union's blessing in pursuing its new venture (J. A. 101a-103a). Approximately $100,000.00 was expended by the Company in building improvements alone, and its investment for land, building and equipment as of the early part of 1966 was $846,000.00. In addition thereto, costly machinery has continued to be placed in the plant, $35,000.00 to $36,000.00 alone for two pieces of equipment (J. A. 117a-119a). The lease which has no cancellation or escape clause extends to the year 2000 in renewal and purchase options in increments of ten years after 1980 (J. A. 127a).

The Petitioner's president Ralph Mattick initially consulted with Warmath as to the adequacy and source of supply of labor and services of transportation for shipment of Petitioner's goods to the southeast and ultimately to the southwest (J. A. 99a). The business dealings between Mattick and Warmath resulted in a warm friendship; and after negotiations for the property had been completed, on occasions when Mattick along with other of the Petitioner's officials were in Humboldt they met socially with Warmath at dinner, cocktail parties, or for a drink (J. A. 65a, 97a). Warmath never at any time represented the Petitioner and did not maintain any interest in the Humboldt plant or its facilities (J. A. 87a).

On January 25, 1966, the Union filed a petition for a representation election among employees of the Petitioner's Humboldt plant. Pursuant to a stipulation for certification upon consent election executed by the parties on February 8, 1966, in the offices of the National Labor Relations Board in Memphis, Tennessee, an election was scheduled for February 18, 1966 (J. A. 98a). While Warmath accompanied certain of the Petitioner's officials to Memphis, it was merely as a friend and not as a representative of the Petitioner which was represented by its attorney, Mr. Carroll C. Gilpin (J. A. 96a-97a). No employees of the Petitioner were present in Memphis at the time the election was scheduled.

Prior to the election on February 18, 1966, several citizens who were neither employees nor managers of the Petitioner, because of their interest in Humboldt (e. g., J. A. 55a, 90a, 105a), and because of the labor violence taking place in Paris, Tennessee, fifty miles from Humboldt, in which the same Union that was attempting to organize the Petitioner was engaging in "goon squad" tactics and "shooting and firing pellets" (J. A. 67a), dis-

cussed the union situation with several employees of the Company. No Company official asked or encouraged any citizen to talk to any employee. Nor was any Company official aware that any employee had been talked to by a citizen (J. A. 100a, 119a). Warmath talked to employee Danny Porter; attorney G. Griffin Boyte and banker Dossie Ray Blankenship spoke to employee Vernon Bolin; city alderman Annie Lou Cox and businessman Robert L. White contacted employee Terry Stevens; grocer Otis Milligan conversed with employee Jack Cross;[1] and grocer Larry Thomas Mills spoke to employee James Crit Sanders, Jr. Boyte, Cox, and White were business associates[2] of Warmath, while Milligan was only a friend. Blankenship and Mills had no business connection with Warmath, nor were they his friends.

Based upon the statements of the seven townspeople and portions of a speech of Company president Mattick and a statement of plant superintendent Ray Stevens to an employee, a complaint was filed against the Petitioner by the National Labor Relations Board, and an unfair labor practice hearing was held on August 10 and 11, 1966. A Trial Examiner of the Board found that the Petitioner violated Section 8 (a) (1) of the National Labor Relations Act. A copy of the Trial Examiner's Decision is printed in the Appendix attached hereto. The Trial Examiner determined that citizens Warmath, Boyte, Cox, White and Milligan were agents of the Company and consequently the Company was responsible for their actions which were found to be coercive.[3] The Petitioner

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[1] Cox spoke to Cross' wife, but not to Cross.

[2] Boyte was a law partner of Warmath, although they did not share the same offices. Cox worked in Warmath's bank. White was in the real estate business with Warmath.

[3] The Trial Examiner did not find that citizens Mills and Blankenship were agents of the Company, although he determined that Mills told employee Sanders that if the Union came

filed timely exceptions to the Trial Examiner's Decision, and the Board issued its Decision and Order on April 18, 1967, in which it basically affirmed the findings of the Trial Examiner. The Board's Decision and Order is printed in the Appendix attached hereto. The Board filed its petition for enforcement, and the matter was heard before the United States Court of Appeals for the Sixth Circuit on December 3, 1968, and the judgment of the Court of Appeals was rendered on April 11, 1969. The Court of Appeals held that the conduct of the five citizens was imputed to the Company, using as a basis, supposition, surmise, and inaccuracies, and that the conduct was coercive.[4]

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into the plant that the Company would close and Sanders would lose his job and it would be hard for him to find work (App. p. A-28, footnote 14), and that Blankenship asked employee Bolin how he felt about the Union and why the men were so strong about the Union and that, like the Humboldt Hosiery Mill, the Company might close and the employees lose jobs if the Union were successful (App. p. A-28, footnote 14).

[4] The Court of Appeals did not hold that the speech of president Mattick or the statement by plant superintendent Stevens constituted violations of the Act (App. p. A-8). Thus in this case the Petitioner's officials and supervisors engaged in no coercive conduct.

REASONS FOR GRANTING THE WRIT.

1. The instant case is one where a court of appeals has rendered a decision in conflict with the decision of another court of appeals and, in addition, has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

A. The Court of Appeals ruled that the Petitioner violated Section 8 (a) (1) of the National Labor Relations Act because of coercive statements made to four employees by five Humboldt, Tennessee, townspeople who were neither employees nor managers, but who were determined agents of the Petitioner, although the Petitioner never asked or encouraged these townspeople to take any action and was never aware of what they had done. This holding represents a monumental departure from legal precedent carefully set out in the agency cases of other circuits and such a determination sans guidance by this Court will have a deleterious effect upon all future cases where townspeople on their own volition and unbeknownst to the employer make statements to employees during an election campaign and are held to be agents of the employer on supposition and surmise rather than on factual evidence in an adversary proceeding.

There is no doubt that in determining responsibility for union activities the principles of agency and its establishment are to be liberally construed. **International Association of Machinists; Tool and Die Makers Lodge No. 35, etc. v. Labor Board**, 311 U. S. 72 (1940). Decisions of other courts of appeal are unanimous, however, in their determination of agency that before an employer may be found to have engaged in unfair labor practices by reason of activities on the part of persons not in its employ or

management and whom it did not clothe with the apparent authority to act for it, the employer must have acquired knowledge of the activities for which it is sought to be charged and the circumstances must be such as to place the employer under an obligation to disavow such activities. **The Colson Corporation v. N. L. R. B.**, 347 F. 2d 128 (C. A. 8, 1965), cert. denied 382 U. S. 904. **Amalgamated Clothing Workers v. N. L. R. B.**, 371 F. 2d 740 (C. A. D. C. 1966). In both **Colson**, supra, and **Amalgamated Clothing Workers**, supra, there was no doubt that the employers had explicit knowledge of the actions of the businessmen who as members of organized local committees were directly involved in the employers' daily affairs, as well as acting in open concert during the organizational campaigns. Even in the case cited by the Court of Appeals in the instant case as authority for holding the Petitioner responsible for the actions of the townspeople, **N. L. R. B. v. Lake Butler Apparel Co.**, 392 F. 2d 76 (C. A. 5, 1968), the members of the local committee owned the land and plant facilities of and lent money to the employer, the employer furnished the members with an employee mailing list specifically so that they could contact the employees, and the employer **knew** that the members were contacting employees to warn them about the union and did nothing to repudiate or disavow their acts.

In the instant case, to hold the Petitioner responsible for the acts of the townspeople would be to emasculate completely even a liberally construed concept of agency. This case has no unfair labor practices committed by the Petitioner's officials or supervisors. This case has no organized local committee to aid in the defeat of the Union. This case has no concerted campaign to have local citizenry talk to the Petitioner's employees. This case has no radio or newspaper editorials calling for the defeat of the Union. This case does have only **five** townspeople acting independently and having short personal or telephone con-

versations with **four** employees—a far, far cry from the usual anti-organizational situations as set out so fully in **Colson, Amalgamated Clothing Workers,** and **Lake Butler,** supra.

There is no doubt that the Petitioner did not ask any citizen to speak to any employee, and also there is no doubt that the Petitioner did not clothe any citizen with authority to speak for it. Consequently, the Court was forced to premise its decision on the fact that the Petitioner acquired knowledge and failed to disavow. This knowledge was miraculously imputed to the Petitioner through Warmath's social contacts with the Petitioner's officials and then supplemented by Warmath's business connections with the four citizens, not upon the evidence in the record, and that the Petitioner's acquiescence was construed as approval.[5] The record is clear that the Petitioner **never** asked, intimated or encouraged any citizen, including Warmath, to contact any employee, and the record is equally clear that the citizens' actions were entirely their own and they were neither instructed to talk to any employees nor did they report their conversations with the employees to anyone[6] (5a, 119a-121a). Such is their

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[5] To base responsibility of the Petitioner for the acts of the citizens, the Court referred to the facts that Warmath enlisted the aid of his business associates, that he was part owner of the land on which the plant was located, that he obtained the names of the employees from Company officials, that Company officials knew he had talked to certain employees, and that Warmath visited the plant on numerous occasions. The record clearly indicates that Warmath never enlisted the aid of his business associates (J. A. 85a, 86a), from the time the plant was purchased by the Petitioner Warmath owned no part of the plant or the land on which it was situated (J. A. 117a), the list of names Warmath received was given him for a city election in November 1965, which was prior to any attempts at organization by the Union (J. A. 114a), Company officials did not know Warmath talked to certain employees (J. A. 119a), and Warmath did not visit the plant on numerous occasions (J. A. 76a).

[6] Milligan did report his conversation with employee Cross to Warmath, but neither Milligan nor Warmath ever so advised the Petitioner.

testimony. Warmath, Boyte, Cox, and White each testified without contradiction that they were not instructed or asked by the Company or anyone else to contact any employee, that what they said and did was of their own doing, and that they never reported their conversations to the Company or anyone else (J. A. 56a, 62a, 107a). While Milligan was never asked by the Company or anyone else to contact any employee, Warmath did ask Milligan to find out what the problems were (J. A. 93a). On their part Cox, White, Milligan, and Boyte testified, again without contradiction, that Warmath in particular never instructed or asked them to talk to any employee, and Warmath himself testified that he never told Cox, White, Milligan, or Boyte to contact any employee[7] (J. A. 85a, 86a). Under such circumstances it was impossible for the Petitioner to have had knowledge of the actions of the citizens, and lacking such knowledge was under no duty to disavow.[8]

The Court of Appeals also placed weight upon a fact that the conversations of the townspeople followed a specific pattern. Such reliance to show something of a conspiracy among Warmath and his associates is implausible, for the conversations of citizens Mills and Blankenship, who were found not to have been agents of the Petitioner by the Trial Examiner,[9] followed somewhat that of the other citizens and were perhaps more explicit. To attach responsibility to the Petitioner for the acts of the towns-

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[7] It should be noted that while Boyte testified for the Petitioner in the unfair labor practice hearing, Warmath, Cox, White, and Milligan testified for the National Labor Relations Board.

[8] Porter was sent to Warmath's office by the Mayor of Humboldt because of an unreasonable traffic ticket (J. A. 43a); Boyte spoke to Bolin in his office (J. A. 49a); Cox telephoned both Mrs. Cross to see about her ill mother and Stevens (J. A. 52a, 54a); White likewise telephoned Stevens (J. A. 58a); and Milligan saw Cross personally (J. A. 35a).

[9] They no doubt lacked the business association with Warmath. Blankenship was Warmath's banking competitor, and Warmath was not even acquainted with Mills (J. A. 82a).

people in circumstances as this case is to ignore proven and established principles and precepts of agency law.

B. The Court of Appeals found no difficulty in determining that the actions of the townspeople were coercive. Such a finding is squarely in conflict with the First Amendment, Section 8 (c) of the National Labor Relations Act, and the overwhelming weight of authority as set out in the decisions of other courts of appeals.

The cases have clearly and concisely held that the right of free speech guaranteed by the First Amendment and Section 8 (c) of the Act should not be defeated by narrow or strained construction. **Montgomery Ward & Co. v. N. L. R. B.**, 385 F. 2d 760 (C. A. 8, 1967). The cases have further held that for statements to be determined coercive and violative of Section 8 (a) (1) of the Act the evidence must support feelings of coercion and interference on the part of the employee and the employee must consider himself restricted or limited either in his right of self-expression or his freedom to participate in self-organization. **N. L. R. B. v. Howard Quarries, Inc.**, 362 F. 2d 26 (C. A. 8, 1966); **N. L. R. B. v. I. Posner, Inc.**, 342 F. 2d 826 (C. A. 2, 1965); **S. H. Kress & Co. v. N. L. R. B.**, 317 F. 2d 225 (C. A. 9, 1963); **J. S. Dillon & Son v. N. L. R. B.**, 338 F. 2d 395 (C. A. 10, 1964); **N. L. R. B. v. D. Gottlieb & Co.**, 208 F. 2d 682 (C. A. 7, 1953).

Clearly the record in the instant case is completely devoid of threats of reprisal or feelings on the part of the employees contacted that they had been coerced or that their rights of self-expression or self-organization were being impaired. This is true even from the testimony of the employees themselves. Employee Terry Stevens in testifying as to what was said to him by Cox and White, related only that Cox said she would appreciate it if he did not go union because she did not think the Company was ready for it and White asked him not to vote for the

Union (J. A. 45a). These statements of Cox and White in the testimony of Stevens are in no way coercive. Employee Danny Porter's recitation of his conversation with Warmath was equally meaningless and nondescript, for Porter, who again it must be noted went to see Warmath for his own benefit, quoted Warmath as casually asking him if the Union was coming in, and upon his affirmative reply, telling him that the Company did not need a union because the plant had lost money[10] (J. A. 44a). Porter did testify that Warmath said he had done him a favor (fixing the traffic ticket) and now Porter could do him one (J. A. 44a). This is explained uncontradictedly by Warmath as asking Porter not to engage in any labor strife (J. A. 67a). The testimony of the remaining two employees who were spoken to also indicates that they were neither coerced nor threatened. Bolin characterized his discussion with Boyte as "just a natural discussion" in which Boyte wanted to know why the men wanted a union, stated that he did not think a union was needed, and referred to the Humboldt Hosiery Mill and how it was lost. Bolin replied that the men did not have soap and towels, some men could smoke at all times and others could not, some men do not work while others do and draw as much money, there is no place to wash hands which are greasy and nasty, and some men are treated nice and others rough (J. A. 49a, 50a). Bolin neither talked nor testified like a man who was coerced or considered himself limited in his right of self-expression or organization. Employee Cross admittedly never talked to Cox (J. A. 36a) and during his conversation with Milligan arguably maintained his views as to the merits of the Union with complete freedom, telling Milligan that the Company had been brought to Humboldt for cheap labor and that the people in St. Louis were making considerably

[10] It was common knowledge that the Petitioner had lost approximately $100,000.00 during its first year (J. A. 53a).

more money than the Humboldt employees (J. A. 37a). Even at the hearing Cross generalized, "I know any place that's union makes more money than a non-union place" (J. A. 38a).

The above-enumerated instances are the sum and substance of the actions taken by the townspeople as related directly by the employees of the Petitioner. Applying the well recognized tests as set out in **Bourne v. N. L. R. B.**, 332 F. 2d 47 (C. A. 2, 1964), for unlawful interrogation, clearly no violations occurred. In **Bourne**, supra, the following tests are carefully laid out: (1) The background, i. e., is there a history of employer hostility and discrimination; (2) The nature of the information sought, e. g., did the interrogator appear to be seeking information on which to base taking action against the individual employees?; (3) The identity of the questioner, i. e., how high was he in the company hierarchy?; (4) Place and method of interrogation, e. g., was the employee called from work to the boss's office?; and (5) Truthfulness of the reply.

In the instant case there is no history of employer discrimination or hostility; all information sought was merely casual conversation and of little or no value; the townspeople were not even employed by the Petitioner; the place and method were social; and all answers were extremely truthful. Consequently, it is readily apparent that there were no fears of reprisal for lawfully pursuing their Union activities on the part of the employees, N. L. R. B. v. Ralph Printing and Lithographing Company, 379 F. 2d 687 (C. A. 8, 1967).

Nor would any mention of the removal of Humboldt Hosiery Mill from the town be found to be an unfair labor practice, for it is well established that disadvantages of

union representation may be stressed so long as the consequences are ones which have actually occurred or may actually and lawfully take place. **N. L. R. B. v. M & B Headwear Co.**, 349 F. 2d 170 (C. A. 4, 1965).

2. The questions presented are of substantial importance and will have great effect on all future cases with like issues.

The number of industrial plants which have located in small towns across the United States has been increasing, and there is no doubt that said plants immediately become major factors in their town's economic and industrial development and growth. Thus, it is no wonder why the citizens of the towns have such a deep and abiding interest in all that affects the plants, including union organization. It is small wonder the citizens of Humboldt were so concerned because of the violence taking place just 50 miles away in Paris, Tennessee, involving the same Union. It is, therefore, manifestly important that the question of agency and the tests therefore as they pertain to the employer's responsibility for statements of the townspeople be authoritatively settled.

Also there is perhaps no right as precious as that of free speech which should be jealously safeguarded. It is one of the cornerstones on which our country was founded. Clearly, the determination of just what constitutes free speech under the First Amendment and Section 8 (c) of the National Labor Relations Act must of necessity follow certain well-defined rules and treatment thereunder must be uniform. The guidance of this Court is most assuredly needed in the circumstances of this case.

CONCLUSION.

For the foregoing reason, a writ of certiorari should be granted.

Respectfully submitted,

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June 1969.

APPENDIX A.

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C., Secs. 151 *et seq.*), are as follows:

UNFAIR LABOR PRACTICES.

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

* * * * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

APPENDIX B.

OPINION.

No. 18374.

United States Court of Appeals
For the Sixth Circuit.

National Labor Relations Board, Petitioner, v. General Metals Products Company, Respondent.	Petition for Enforcement of an Order of the National Labor Relations Board.

Decided April 11, 1969.

Before: O'Sullivan, Peck and Combs, Circuit Judges.

Combs, Circuit Judge. The National Labor Relations Board found that General Metals Products Company violated Section 8 (a) (1) of the National Labor Relations Act by interfering with, coercing and restraining employees in the exercise of union organizational activities. The Board petitions for enforcement of its order.

The company's main office and factory are located in St. Louis, Missouri. In 1965, a branch plant was established in Humboldt, Tennessee. Frank Warmath, a resident of Humboldt, played a key role in persuading the company to come to that community. He is a lawyer with extensive interests and great influence in the community. During the time in question he was chairman of the board of a local bank, partner in a real estate agency, part owner of the land on which the plant was located, and

financially interested in the construction company which built the plant.

In early 1966, a union organizational drive was commenced at the Humboldt plant and a petition for election was filed. A meeting was held between company and union officials and the company agreed to hold an election. Warmath, though not officially representing the company, was present at this meeting. He met frequently with company officials both before and during the union campaign and was a personal friend to the company president, Ralph Mattick. The meetings were ostensibly social but company business and the union campaign were discussed. In response to a company official's statement that "they didn't want the Union down there," Warmath said he was interested in seeing that nothing took place.

Warmath discussed the union with his business and political associates, including G. Griffin Boyte, his law partner; Robert White, a real estate partner; Annie Lou Cox, manager of a bank of which he is board chairman; and Otis Milligan, a local grocer and politician.

Activities of the townspeople included the following incidents. A plant employee, Danny Porter, received a traffic ticket during the union campaign. Complaining that the ticket was unreasonable, he went to see the Mayor of Humboldt who sent him to Warmath. Warmath fixed the ticket and then asked Porter about the union. He told Porter that no union was needed; he said that he had done Porter a favor and that Porter could now do him one. The return favor was not specified.

Another employee, Terry Stephens, received telephone calls from Robert White and Annie Lou Cox. White told him he would appreciate it if Stephens didn't vote for the union. Miss Cox said the company wasn't ready for the union, and she would like to influence Stephens "in any way she could" not to vote for the union.

Miss Cox also called the home of employee Jack Cross. Speaking to Mrs. Cross, she said that the company might leave if the union came in and tried to have Mrs. Cross influence her husband. Cross was also approached by Otis Milligan who said "they" sent him to talk with Cross about the union. Milligan said that the company might move if the union came in and that the election should be postponed for a while. Milligan reported his conversation to Warmath.

Warmath's law partner, Boyte, sent a message to the plant to have an employee, Vernon Bolin, come to his office for a talk. Boyte told Bolin that he was concerned about a union, that it was not needed, and reminded him that another factory in Humboldt had closed when the union came in.

Company officials made no secret of their opposition to the union. Raymond E. Stevens, plant superintendent, asked an employee if he had received any company literature and what he thought about the union. The employee complained about a lack of washing facilities at the plant and Stevens said that soap would be cheaper than union dues.

Two days before the election, Mattick, the company president, spoke to the assembled employees. He told them not to destroy their opportunities, pointing out the company's policy of promoting employees and future growth possibilities of the plant. He said success would come by cooperating and working together and that no "witch doctor" was needed. He stated that it was up to the employees to decide whether the plant would "change from a branch plant to something else." A majority of the employees voted against the union in the representational election.

The company contends that no agency relationship was established between the townspeople and the company and that the company is not responsible for their actions. The Board points to Warmath's close connections with the company and his connections with the other townspeople as establishing agency within the necessary limits.

There is no question but that the activities of Warmath and his associates were coercive in nature. The pivotal question is whether their conduct can be attributed to the company. In dealing with this question, we look to the Congressional Act and the cases interpreting it. In *International Association of Machinists; Tool and Die Makers Lodge No. 35, etc. v. Labor Board,* 311 U. S. 72, 80 (1940), the Supreme Court emphasized the general policy underlying passage of the Act, stating:

> "The employer, however, may be held . . . [responsible] even though the acts of the so-called agents were not expressly authorized or might not be attributed to him on strict application of the rules of *respondeat superior.* We are dealing here not with private rights . . . nor with technical concepts pertinent to an employer's responsibility to third parties for acts of his servants, but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence. The existence of that interference must be determined by careful scrutiny of all of the factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible."

This reasoning was reaffirmed in *Packard Motor Car Co. v. Labor Board,* 330 U. S. 485 (1947).

International Association of Machinists and *Packard* were decided under the Wagner Act. "Employer" was defined in that Act to include "any person acting in the interest of an employer, directly or indirectly." With the

passage of Taft-Hartley in 1947 the term "agent" was brought into the Act. "Employer" was then defined to include "any person acting as an agent of an employer, directly or indirectly." Section 2 (2), National Labor Relations Act, as Amended, 61 Stat. 137 (1947), 29 U. S. C., § 152 (2). The 1947 Act included this addition:

> "In determining whether any person is acting as an 'agent' of another so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

The legislative history and the language of Section 2 (2) make it clear that Congress intended by the amendment to exonerate management of responsibility for the acts of those beyond its control and direction. But, it is just as clear by the terms of Section 2 (2), as amended, and by the addition of Section 2 (13) that Congress intended that strict rules of agency should not be applied in determining employer responsibility. *Cranco, Inc.* v. *N. L. R. B.*, 399 F. 2d 1 (5th Cir. 1968); *Furr's Inc.* v. *N. L. R. B.*, 381 F. 2d 562 (10th Cir. 1967), *cert. denied*, 389 U. S. 840 (1967); *Amalgamated Clothing Workers* v. *N. L. R. B.*, 371 F. 2d 740 (D. C. Cir. 1966); *Colson Corporation* v. *N. L. R. B.*, 347 F. 2d 128 (8th Cir. 1965); *Lummus Co.* v. *N. L. R. B.*, 339 F. 2d 728, 735 (D. C. Cir. 1964); *N. L. R. B.* v. *Arkansas-Louisiana Gas Co.*, 333 F. 2d 790, 795 (8th Cir. 1964); *N. L. R. B.* v. *Champa Linen Service Co.*, 324 F. 2d 28 (10th Cir. 1963); *Local 636 Etc., Plumbing & Pipe Fitting Industry of U. S.* v. *N. L. R. B.*, 287 F. 2d 354 (D. C. Cir. 1961).

The foregoing cases follow the principles of *International Association of Machinists, supra*, either in specific language or by strong implication. It is clear, therefore, that in determining the company's responsibility for the acts of others the rules of agency shall be given a liberal construction.

Under these guidelines, we conclude that there is substantial evidence from which the Board could reasonably impute the conduct of Warmath and his associates to the company. Although Warmath had no official connection with the company, as part owner of the land on which the plant was located and as the owner of extensive business interests in the community, he stood to benefit financially from the continued operation of the plant. At numerous meetings between Warmath and company officials, the union situation was discussed and Warmath was told that the company was opposed to being organized at that time. He maintained that the company "didn't specifically ask me to do anything," but he admitted that he had obtained the names of employees from company officials and that company officials knew he had talked to certain employees. Moreover, Warmath visited the plant on several occasions and significantly was present at the meeting where it was agreed to hold a consent election. To hold that the company was unaware of his activities or disapproved of them would be contrary to reason and common sense. Since company officials were aware of his activities, their acquiescence must be construed as approval. See *Amalgamated Clothing Workers, supra,* and *Colson Corporation, supra.*

A somewhat similar situation was presented in *N. L. R. B.* v. *Lake Butler Apparel Co.*, 392 F. 2d 76 (5th Cir. 1968). There, the Union County Development Authority had promoted and financed the company's plant and, to some extent, was financing its current operations. Certain members of the board of directors of the Authority had made threats to individual employees during a union campaign. In holding the company responsible for the directors' activities, the court noted that the agency connection between the company and the Authority was established by the fact that the company president supplied the Authority with a list of employees and took no action to avoid the violative conduct of the directors.

Warmath enlisted the aid of his business associates and friends to defeat the union. Since these people were acting under his directions, it follows that the company is responsible for their actions. The employees were led to believe that Warmath and his associates were acting for the company. For example, employee Cross testified that the grocer, Milligan, told him that "they sent him down there to talk to me about the union, not mentioning who they were." Employee Bolin testified that Warmath's law partner told him that "he [Boyte] wanted to talk to some of the people out at General Metals, and that he might want to talk to me again."

It is likewise significant that the conversations of the townspeople followed a specific pattern. In each case where an employee was interrogated primary emphasis was placed on the fact that the company was new in Humboldt and that unionization might cause loss of the plant to the community. Although each citizen-interrogator contended that this was his own idea, this also was the central theme of the company's anti-union campaign, keynoted by the speech of its president, Mattick, and confirmed by the letters sent to employees from the company's main office. Substance must prevail over form and, since the strict rules of agency are not controlling, we think the record supports the Board's conclusion that the company knew of, approved, and by its silence confirmed the actions of Warmath and his associates.

We are not holding that the speech of president Mattick or the interrogation of an employee by plant superintendent Stevens, standing alone, constitutes a violation of the Act. See *N. L. R. B.* v. *Uniform Rental Service,* 398 F. 2d 812 (6th Cir. 1968). But, both incidents must be considered as part of a pattern of conduct which includes the activities of Warmath and his associates. Since we hold that the latter activities are clear violations, it follows that the Board's order should be enforced. It is so ordered.

APPENDIX C.

164 NLRB No. 1

D-9691,
Humbolt, Tenn.

United States of America

Before the National Labor Relations Board.

General Metal Products Company and International Association of Machinists and Aerospace Workers, AFL-CIO.	Cases Nos. 26-CA-2433 26-RC-2582.

DECISION AND ORDER.

On November 4, 1966, Trial Examiner Lowell M. Goerlich issued his Decision in the above-entitled consolidated proceeding,[1] finding that the Respondent had engaged in and was engaging in unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Trial Examiner also found that the Respondent and certain townspeople interfered with the Board election of February 18, 1966, in the representation proceeding, and recommended that the said election be set aside and that a new election be held. The Trial Examiner further recommended that other allegations of the complaint be dismissed. Thereafter, the Respondent and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, as amended, the National

[1] The Regional Director's Order Consolidating Cases and Notice of Hearing was issued July 26, 1966, and not January 26, 1966, as stated by the Trial Examiner.

Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following modifications:

1. The Trial Examiner found, and we agree, that Respondent by the following conduct violated Section 8 (a) (1) of the Act:

(1) Plant Superintendent Stevens unlawfully interrogated employee Williams as to what he thought of the Union.

(2) Attorney-businessman Warmath and his associates, citizens of the community of Humbolt, in which Respondent's plant was located, engaged in the following conduct: (a) Warmath interrogated employee Porter about the Union; (b) Warmath bestowed a benefit upon Porter as an inducement to vote against the Union; (c) Boyte, Warmath's law partner, interrogated employee Bolin concerning the employees' union sympathies, and implied that if the Union were successful, the Respondent would leave Humbolt; (d) White, a business partner of Warmath, interrogated employee Stevens concerning the Union; (e) Cox, the manager of the bank of which Warmath was chairman of the board, intimated to employees Stevens and Cross that the Respondent would move the plant if the Union were successful; (f) Milligan, a local grocer, interrogated employee Cross concerning the Union, told him the Company might go to another town if the Union got in, and reported the conversation to Warmath. We adopt the Trial Examiner's finding, for the reasons given

by him, that the Respondent was responsible for this conduct; we find, as did the Trial Examiner, that Warmath and his associates discussed and devised with the Respondent ways and means for a common endeavor to defeat the Union, that they acted on behalf and in the interest of Respondent with the latter's knowledge and approval, and that their conversations with employees led employees to believe that Warmath and his associates were speaking for the Respondent.

2. In addition, we find, in the context of Respondent's other unlawful conduct including the above-described conduct of Warmath and his associates, that the Respondent violated Section 8 (a) (1) by Respondent President Mattick's speech to the assembled employees on February 16, 1966, in which Mattick promised the benefits of expanded operations without the Union, and threatened a curtailment of operations if the Union were selected as bargaining agent.[2]

3. In agreement with the Trial Examiner, we find that the election was interfered with by the aforesaid conduct, and by grocer Mills, who told employee Sanders that "his information said that if the Union came into the plant over here, that the Company would close and [Sanders] would lose [his] job, and it would be hard for [him] to find work afterwards"; and by Blankenship, a local banker, who interrogated employee Bolin about how he felt about the Union and why the men were so strong

[2] A copy of this speech was placed in evidence by the Respondent at the hearing herein, was made part of the record in the representation proceeding consolidated herewith, its contents are not disputed by the Respondent, and the matter was fully litigated. Moreover, the Trial Examiner found, and we agree, that the speech constituted interference with the election. For these reasons, the Trial Examiner's action granting the Respondent's motion to dismiss paragraph 9 of the complaint, which alleged this speech to be violative of Section 8 (a) (1) of the Act, is hereby reversed, and the motion is denied.

about the Union, and told Bolin he was afraid the plant might close down and move to Texas if the Union were not voted out.[3]

Order.

Pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified below, and hereby orders that the Respondent, General Metal Products Company, Humbolt, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified.

1. In paragraph 1 (a) of the Trial Examiner's Recommended Order insert the word "unlawfully" before the word "interrogating."

2. Substitute the following for the first two indented paragraphs of the NOTICE:[4]

> WE WILL NOT threaten employees with reprisals to discourage affiliation with or support of any labor organization; unlawfully interrogate employees concerning union activities or affiliations; aid, abet, assist, or cooperate with any outside group of local citizens or businessmen in any campaign designed to interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization. WE DISAVOW any claim, assertion, or implication made by such group that our Humbolt operation will

[3] In the absence of exceptions, we adopt *pro forma* the Trial Examiner's finding that Respondent did not violate Section 8 (a) (1) of the Act by virtue of the conduct of Mills and Blankenship. The Trial Examiner's Conclusion of Law No. 4 is modified to read as follows: ". . . The election conducted on February 18, 1966, was interfered with by the Respondent and the townspeople."

[4] Add the following after the street address of Region 26, at the bottom of the Notice attached to the Trial Examiner's Decision: . . .", Tel. No. 534-3161.

be curtailed or discontinued as reprisal for our employees' affiliation with or support of any labor organization.

IT IS ALSO ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

IT IS FURTHER ORDERED that the election held on February 18, 1966, in Case No. 26-RC-2582, be, and it hereby is, set aside, and that said case be, and it hereby is, remanded to the Regional Director for Region 26 to conduct a new election when he deems that circumstances permit the free choice of a bargaining representative.

Dated, Washington, D. C., Apr. 18, 1967.

.....
Frank W. McCulloch,
Chairman,

.....
John H. Fanning,
Member,

.....
Sam Zagoria,
Member,

(Seal) National Labor Relations Board.

APPENDIX D.

TXD-653-66,
Humboldt, Tenn.

United States of America
Before the National Labor Relations Board,
Division of Trial Examiners,
Washington, D. C.

General Metal Products Company and International Association of Machinists and Aerospace Workers, AFL-CIO.	Cases Nos. 26-CA-2433, 26-RC-2582.

George F. McInerny, Esq., of Memphis, Tenn., for the General Counsel.

William E. Fortas, Esq., Earl W. DeHart, Esq., of Memphis, Tenn., and Carrol C. Gilpin, Esq., of St. Louis, Mo., for the Respondent.

H. C. Summers, of Atlanta, Ga., and Orlan R. Long, of Jackson, Tenn., for the Charging Party.

TRIAL EXAMINER'S DECISION.

Statement of the Case.

On January 25, 1966, the International Association of Machinists and Aerospace Workers, AFL-CIO, herein referred to as the Union, filed a petition for a representation election among certain of the employees of the General Metal Products Company at its Humboldt, Tennessee, plant. On February 18, 1966, pursuant to a Stipulation for Certification Upon Consent Election executed by the parties on February 8, 1966, an election by secret ballot

was conducted under the direction and supervision of the Regional Director for Region Twenty-six. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the National Labor Relations Board Rules and Regulations. The tally of ballots showed that there were approximately 28 eligible voters and that 25 ballots were cast, of which 8 were for the petitioner and 14 were against the petitioner; 3 ballots were challenged. The challenges were not sufficient in number to affect the results of the election.

On February 23, 1966, the petitioner filed timely objections to the conduct affecting the result of the election. The Acting Regional Director investigated the objections and thereafter on April 28, 1966, issued and served on the parties his Report on Objections. In his report, the Acting Regional Director recommended to the Board that Objections 1, 2, 3 and 4 be sustained and that the election be set aside and a new one directed.

Thereafter, on May 19, 1966, the employer filed timely exceptions to the Acting Regional Director's Report. In its exceptions, the employer contended that the Acting Regional Director's findings and conclusions respecting Objections 1, 2, 3 and 4, were in error and contrary to Board precedent, and it requested that a hearing be scheduled for determination of the issues raised by the objections.

The Board having duly considered the employer's exceptions was of the opinion that substantial and material factual issues existed with respect to the allegations contained in Objections No. 1, 2, 3, and 4, which could best be resolved by hearing. The Board ordered that a hearing be held before a Hearing Officer to be designated by the Regional Director for Region Twenty-six for the purpose of taking testimony to resolve issues raised by the petitioner's Objections 1, 2, 3, and 4, the Regional Director's Report and the employer's Exceptions. There-

after, on June 28, 1966, the Regional Director caused to be issued a Complaint and Notice of Hearing in which the General Metal Products Company was named as the Respondent. The complaint was based upon a charge filed by the International Association of Machinists and Aerospace Workers, AFL-CIO, on May 23, 1966.

The issues raised by the Complaint were substantially the same as those raised in the Petitioner's objections to the election.

On July 21, 1966, the Board having been administratively advised that a complaint had been issued in Case No. 26-CA-2433 involving issues similar to those raised by petitioner's objections on which a hearing had been directed, the Board ordered that its Order Directing Hearing be amended to the effect that "a hearing be held to resolve the issues raised by the petitioners' objections 1, 2, 3, and 4 and that such hearing be consolidated with any hearing on the complaint issued in Case No. 26-CA-2433, and held before Trial Examiner to be designated by the Chief Trial Examiner." The amended order provided that "the Trial Examiner, or the Hearing Officer, designated for the purpose of conducting the hearing, shall prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues."

On January 26, 1966, the Acting Regional Director for the Twenty-sixth Region, issued an Order Consolidating Cases and Notice of Hearing.

The consolidated cases came on to be heard before the undersigned Trial Examiner Lowell Goerlich, on August 10 and 11, 1966 at Humboldt, Tennessee. At the hearing, each party was afforded full opportunity to be heard, to call, examine and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and con-

clusions of law, and to file briefs. All briefs have been reviewed and considered by the Trial Examiner.

The issues before the Trial Examiner are whether the election of February 10, 1966, shall be set aside and whether the Respondent be found guilty of a violation of Section 8 (a) (1) of the Act by reason of the Respondent's misconduct and that of certain townspeople.

Upon the whole record and from his observation of the witnesses, the Trial Examiner makes the following:

Findings of Fact and Conclusions.

I. The business of the Respondent.

The Respondent, General Metal Products Company, is now and has been at all times material herein, a Tennessee corporation with a plant located at Humboldt, Tennessee,[1] where it is engaged in the manufacture of metal stampings and metal fabrications, tools and dies.

During the past 12 months, the Respondent, in the course and conduct of its business operations, received goods valued in excess of $50,000 from points directly outside the State of Tennessee, and during the same period, Respondent manufactured, sold, and shipped products valued in excess of $50,000 from its Humboldt, Tennessee, plant to points directly outside the State of Tennessee.

The Respondent admits and the Trial Examiner finds that the Respondent is now and has been at all times material herein, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

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[1] The United States Census of Population, 1960, U. S. Department of Commerce, Bureau of Census, lists Humboldt, Tennessee, with a population of 8,482.

II. The labor organization.

International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

III. The unfair labor practices
and
the objections to the election.

The General Counsel cites the following incidents in support of the objections to the election and the allegations of unfair labor practices in the complaint.

First: The Stevens Incident:

Employee Billie Ray Williams testified that on February 16, 1966, Plant Superintendent Raymond Stevens came to him while he was working and said, "Billy, have you received any mail from St. Louis?"[2] Williams responded in the affirmative, whereupon Stevens said, "Well, what do you think about the Union?" Williams replied, "I don't know" and commented, "when we get off work our hands are so greasy their not fitten to drive a car home. They ain't got no soap to wash them with." To which Stevens replied, "Well, a bar of soap every month would be cheaper than paying union dues and fines for not attending meetings." Stevens' version of the conversation differed in some respects. He testified, "I approached Billy and asked him if he had received the letter that Mr. Mattick[3] sent out. He replied he had. I asked him what he thought about the letter. He didn't make any comment. He began to complain about the soap and towels, and I went on to tell him that that was the Company policy not to furnish soap and towels." Stevens denied

[2] The employer's main plant and offices were located in St. Louis, Missouri.

[3] Mr. (Ralph) Mattick was the President of the Respondent.

that he had asked Williams "how he felt about the Union" or "what he thought about the Union." Stevens said that he inquired about the letter because "we wanted to see if everybody received one."

In view of the testimony of Stevens which suggests that the question in respect to what Williams thought of the Union was posed, the Trial Examiner is persuaded that this question was also asked by Stevens.[4] Like Acting Regional Director Harrington, the Trial Examiner finds that Stevens' interrogation of Williams was grounds for sustaining Objection No. 1. Moreover, in the context of the employer's antimunion campaign, the interrogation of Stevens served up legitimate employer purpose, but allowed the Respondent to elicit important information most useful to it in formulating a program whereby it could draw its employees away from union affection. The conduct of Stevens detailed above was of such a character as to reasonably tend to restrain or interfere with employees in the exercise of rights guaranteed by Section 7 of the Act and was in violation of Section 8 (a) (1) of the Act. *The Rushton Company,* 158 NLRB No. 151.

Second: The incidents involving the townspeople.[5]

(A) The activities of Frank Warmath.

Frank Warmath is a Humboldt attorney and a prominent businessman who has connection with 43 different corporations, including the First National Bank and the local newspaper, the Courier-Chronicle. He owns the Humboldt Motel and is associated with Robert White in a finance company and a real estate and insurance agency. He is interested in the industrial development of Humboldt and is a member of the Tennessee State Industrial

[4] Based upon the demeanor of the witnesses the Trial Examiner has reached the same conclusion.

[5] The findings in this subsection are based upon what the Trial Examiner considers to be the more plausible testimony. Demeanor of each witness was considered.

Commission. In this capacity he urged the Respondent to locate in Humboldt. He had money invested in the physical properties acquired by the Respondent in Humboldt.[6] His construction company built the plant. He was on friendly terms with the officials of the Respondent.[7] He testified, "I've got every kind of business there is here, except retail dry goods, and things like that. Anything that happens to Humboldt affects me ultimately." Warmath, like the Respondent, preferred that the Union remain away from the Respondent's Humboldt plant, a fact which was also known to the Respondent.

Employee John Garland Turner conversed with Warmath in his office in the First National Bank on February 17, 1966. Warmath told him to consider his vote before he voted and "go the right way."

On February 10, 1966 employee Danny Keith Porter visited the Mayor of Humboldt in reference to a traffic ticket in the amount of $43.50. The Mayor called Warmath. At Warmath's suggestion Porter appeared at Warmath's office the next day. Warmath asked Porter whether the union "was going to come out to where [Porter] worked." Porter responded that he thought "it was going to come in." Warmath commented that a union was not needed "out there" and that the plant had lost money. He told Porter he had called him "over . . . about this fine." He advised Porter that he had "fixed" it for him and that he would not have to appear. As Porter was leaving he said, "Well, I did you a favor. Now, I believe you can do me one."

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[6] Warmath testified that he had dealt with the Respondent "in several and varied capacities; as industrial representative for the State of Tennessee, and, also [he] had a personal interest in the facility in which they were interested, the physical properties in which they were interested. [He] had quite a bit of money in it."

[7] Warmath testified, "We get together every time they [company officials] come to town . . . We are going to do the same thing this afternoon, and if they're here tomorrow we are going to do the same thing tomorrow. . . ."

(B) The activities of G. Griffin Boyte.

Attorney G. Griffin Boyte, Warmath's law partner, called employee Vernon Utah Bolin[8] to his office on February 16, 1966 and questioned him about the employees' concern for the Union at the Respondent's plant. He asked Bolin "how he thought it was going" and "what his fieelings were," and Boyte said that he did not think the employees needed a Union. Bolin outlined the reasons why the men felt they wanted a Union. Boyte mentioned the Humboldt Hosiery Mill and dwelled at some length on the fact that employees had lost their cars and homes when the plant moved to Texas, inferring that the same thing might transpire if the Union obtained bargaining rights in the Respondent's plant. Boyte told Bolin that "he wanted to talk to some of the people out at General Metals, and that he might want to talk to [Bolin] again." Boyte said that he "might talk to them down there and see what the situation [was], if something can be done about that."[9]

(C) The activities of Robert L. White.

Robert L. White, a partner of Warmath, was in the real estate and insurance business. He rented a home to employee Terry Stevens. During the election campaign White phoned Stevens. White asked Stevens what he thought about the Union and Stevens answered that he was in favor of it, whereupon White asked Stevens what the employees' complaints were and why he was in favor of the Union. After a discussion on the complaints White

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[8] Bolin was prominent in the union movement. All the union meetings except one were held at his home. Such circumstance, no doubt, explains the reason for Boyte's call.

[9] Boyte denied that he had mentioned the Bolin conversation to company representatives. In view of Boyte's interest in the union election campaign and Bolin's prominence in the Union movement, Boyte's denial appears implausible.

said that he did not think the Company was ready for a Union and asked Stevens not to vote for it.

White testified, "I told him I felt like if they would give the company a chance to get settled, that they would make any adjustment that should be made, if any should be made."

(D) Activities of Annie Lou Cox.

Annie Lou Cox is the manager of Crossing Branch First National Bank, of which Frank Warmath is chairman of the Board. She is also an Alderman for the City of Humboldt and has been employed by Warmath since July, 1963. During the election campaign Cox called employee Jack Cross' home by telephone. Cross' wife answered. Cross overheard the conversation between Cox and his wife. Cox explained that she wanted to talk to Cross about the Union. She said that "they were very concerned about it" and "there might be a possibility that they would lose the Company if the Union should come out there." She asked Cross' wife to try to influence Cross to vote against the Union.

Cox also called employee Terry Stevens on the telephone in the middle of February. Cox said that "she thought that the Company wasn't ready for a union, and she would like to influence [him] anyway she could to get [him] not to go to the Union, because she didn't think the Company was ready for it, and she would appreciate it [if] he would consider it." Cox said that the City Government was interested in the Respondent remaining in Humboldt and that she would "appreciate it, if he could see fit to wait until the Company was well established before voting for the Union."

(E) Activities of Otis Milligan.

Otis Milligan, a local grocer, visited employee Jack Cross on February 15, 1966. Milligan said that "they sent him down there to talk to [Cross] about the Union." Milligan commented that the Respondent was a new company and had lost money. He asked Cross what the "trouble" was "out there." Cross related several grievances. Milligan suggested that the election be postponed for about a month at which time the Respondent would be more agreeable to an election. Milligan also commented that "they were very concerned about the Company; that there was a possibility that if [the employees] did get a Union in they might move out, or go back to St. Louis, or go to some other town." Milligan asked Cross how he felt about the Union; Cross replied that he had not made up his mind.

Milligan reported the Cross conversation to Warmath.

(F) Activities of Larry Thomas Mills.

Larry Thomas Mills, a grocer doing business at Medina, Tennessee, in the first week in February sent a message to employee James Crit Sanders, Jr., by his father requesting him to visit him at his store. Upon arrival at the store Sanders inquired about Mills' conversation with his father He asked Mills whether he was trying to find out if he was for or against the Union and "who he was trying to find out for." Mills answered that "some people had got in touch with him, and wanted him to find out." Mills further commented that "his information said that if the Union come into the plant over here, that the Company would close and [Sanders] would lose [his] job, and it would be hard for [him] to find work afterwards."

(G) Activities of Dossie Ray Blankenship.

Dossie Ray Blankenship is the vice president of the Merchants State Bank, Humboldt, Tennessee. Around February 15, 1966, Blankenship asked employee Vernon Utah Bolin to come to the bank. Upon Bolin's arrival Blankenship said he was "concerned about that Union business," and that "the people out there had called him[10] and he had recommended [Bolin] and [his] brother to go to work out there and that he felt it was his duty to talk to [him] about it." Blankenship asked Bolin how he "felt about the Union." Bolin replied that he "believed the Union would come in." Blankenship mentioned the Humboldt Hosiery Mill where employees had lost jobs and said that "he was afraid that might happen to General Metals . . . the way that that plant closed down and moved to Texas." Blankenship asked Bolin to talk to his brother, Joe, and see if they "couldn't get [the Union] voted out from here." During the conversation Blankenship asked Bolin "why the men was so strong about the union." The reasons were discussed.

(H) The alleged connections between the townspeople and the Respondent.

Warmath spearheaded the townspeople's agitation for the defeat of the Union. Warmath discussed the approaching election with his employee Cox and his law partner Boyte. Warmath suggested to his business partner White that election issues be discussed with any employees living in "our houses." Warmath discussed the election issues with Grocer Milligan and asked him to find out what the employees "was wanting." Milligan reported his conversation with employee Cross to Warmath. Warmath himself talked to several employees.

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[10] By this remark Blankenship left the impression with Bolin that he was speaking on behalf of the Respondent.

Warmath testified that he had discussed the Union situation with company officials including Mattick and attorney Gilpin ". . . in our meetings; probably at dinner at my house, or cocktail parties, or a drink . . . at my house." The conversations concerned a union, the same as at Paris, Tennessee,[11] which "was attempting to organize or contacted some members of the labor force . . . and that some of them were carrying cards." Warmath was told that in the light of the Paris situation, union organization was "scaring them to death." The company officials, including President Mattick, informed him that "they weren't interested in being organized at the time. Meetings between the company officials and Warmath occurred whenever the company officials visited Humboldt. Warmath assumed the visits were in connection with the union organizational campaign. Warmath testified that he offered to be helpful to the Respondent to the extent that he was "definitely not interested in seeing anything happen to Humboldt wherein labor and management would get into anything that would cause labor unrest. . . ." Warmath discussed "strategy" with the company officials in respect to "generalities about who workers were." According to Warmath he "probably asked" the Respondent for a list of the names of employees and received it. He told the Company that "we of Humboldt; and me, particularly, weren't interested in any labor disputes or anything connected with labor disputes at Humboldt . . ." Warmath discussed his talking to employees with company officials "generally in the cocktail things." Warmath had been through the plant "different times." His bank handled the Respondent's payroll accounts. He attended the Labor Board hearing in the representation case noted in the caption. His point of view in reference to the Union coincided with that of the Respondent.

[11] The Paris situation referred to in the record concerned a strike by the Union which was described as involving violence.

The Trial Examiner cannot believe that the contribution of Warmath and his associates to the Respondent's campaign to defeat the Union was of a serendipitous kind for it is only reasonable to conclude that Warmath and his associates were engaged in a common endeavor with the Respondent, of which the Respondent had knowledge and approved. It is wholly implausible that Warmath, considering his like interests with the Respondent, his supererogatory characteristics, and his numerous meetings with the company officials at his home and elsewhere, did not discuss and devise ways and means for a common endeavor to defeat the Union. This to some extent Warmath admitted when he testified that at such meetings he offered to be helpful, discussed strategy, obtained a list of employees' names and discussed talking with employees. Moreover, Warmath's frequent meetings with company officials at his home, his appearance at the Labor Board representation hearing, his visits to the Respondent's plant, his financial interests in connection with the Respondent's property, his vast financial interests in the community (which suggested that he held interest in the Respondent), and his conversations with employees might well have caused employees to believe that Warmath and his associates were speaking for the Respondent.[12] Furthermore, the Respondent, who must have known of the activities of Warmath and the townspeople detailed above (both because of the numerous meetings and discussions between the company officials and Warmath and the size of the community in which the events occurred), made no

[12] Boyte's statement to Bolin that "he wanted to talk to some of the people out at General Metals"; Blankenship's remark to Bolin that "the people out there had called him," Milligan's statement to Cross that "they sent him down there to talk" and Mill's answer to Sanders, Jr., that "some people had got in touch with him and wanted him to find out," likewise created the impression that the townspeople were speaking for the Respondent.

disavowals of the antiunion election propaganda the townspeople disseminated.[13]

In view of the foregoing it is the Trial Examiner's opinion that in accordance with the holding in *The Colson Corporation*, 148 NLRB 827, aff'd., *Colson* v. *N. L. R. B.*, 347 F. 2d 128, 237, the Respondent must be held responsible for the antiunion campaign conducted by the townspeople.

(I) Conclusions in respect to the townspeople.

The record as a whole warrants a finding (the Trial Examiner so finds) that the Respondent interfered with, restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act and thereby violated Section 8 (a) (1) of the Act by: (1) Warmath's interrogation of employee Porter as to whether the Union "was going to come out to where [Porter] worked," (2) Warmath's bestowal of a benefit upon Porter in the nature of a release of a parking ticket in the amount $43.50 as an inducement to vote against the Union, (3) Boyte's interrogation of employee Bolin in respect to why the employees felt they needed a union and his remarks implying that if the Union were successful, like the Humboldt Hosiery Mill the Respondent would leave Humboldt, (4) White's interrogation of employee Terry Stevens as to what the employees' complaints were and why he was in favor of the Union, (5) Cox's intimation to employee Stevens that the Respondent would move its plant if the Union was successful, i. e. Stevens should vote against the Union because the City Government was interested in the Respondent remaining in Humboldt, (6) Cox's remark overheard by employee Cross, "There might be a possibility that they would lose the Company if the Union should

[13] Cf. *The Russell Manufacturing Co., Incorporated*, 82 NLRB 1081, 1083, 1084.

come out there," (7) Milligan's interrogations of employee Cross as to what the "trouble" was "out there" and how he felt about the Union and Milligan's statement to Cross that "they were very concerned about the Company; that there was a possibility that if [the employees] did get a Union in they might move out, or go back to St. Louis, or go to some other town."[14]

Third. The Mattick Speech.

Company President Mattick delivered a speech to employees from approximately 3:00 p. m. to 3:15 p. m. on February 16, 1966, during working time on company property.

In his report on Objections, Acting Regional Director Harrington held that "that portion of the speech which warns the employees not to destroy the opportunity provided by the employer further buttresses the fears aroused by the townspeople that unionization of the plant would mean loss of jobs or economic benefits, and merit is found to the objection."[15]

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[14] No Section 8 (a) (1) violations have been made in respect to the activities of Mills and Blankenship since the alleged agency relationship existing between them and the Respondent was somewhat ambiguous. However, their conduct as follows contributed to a destruction of the laboratory conditions which the Board seeks to maintain in regard to its elections and thus constituted unlawful interference with the election: Mill's statement to employee Sanders that "his information said that if the Union came into the plant over here, that the Company would close and [Sanders] would lose [his] job, and it would be hard for [him] to find work," Blankenship's interrogation of employee Vernon Utah Bolin in respect to how he "felt about the Union" and "why the men were so strong about the Union," and Blankenship's statement that like the Humboldt Hosiery Mill, the Respondent might close and the employees lose jobs if the Union were successful.

[15] The Acting Regional Director commented: "The contents of Mattick's speech have been carefully read and have been considered in context with the finding concerning Stephen's (sic) interrogation described in Objection 1 and the activities of townspeople as described in Objections 3 and 4."

No doubt the Acting Regional Director was referring to that portion of the speech, to wit:

> "All of this spells opportunity. Don't destroy it. Look about you, examine the make-up of this which we call opportunity. 40,000 sq. ft. of plant, just one-third or less of what is in St. Louis; 20 acres of ground, 4 times larger than St. Louis; $846,000 of money invested, which is only the beginning of future investment to follow as we grow. *Oddly enough, it's called a branch plant.* The town of Humboldt calls it *a branch. How long are you and we willing to let it be known by this identity? Don't trod on this opportunity. Don't destroy those goals that lie ahead.* They're here, and if we work at it together, they'll be accomplished. We don't need a witch doctor.[16] He or it can not supplant cooperation, working and planning together. Remember, there is no magic formula for success—nor will there ever be. . . .
>
> * * * * * * *
>
> "Remember, you twenty-eight fine people—*you'll decide,* not we, on *how fast plant no. 2 will change from a branch plant to something else.* . . ." (Italic's added.)

Mattick's remarks, in the context uttered, can fairly be interpreted to mean that if the Union was chosen, the Respondent would continue the Humboldt plant as a "branch" plant and curtail any plans to expand its physical properties and production. This is a clear threat that the choice of the Union meant the loss of job opportunities and job benefits which were attendants upon a growth of business. It is the Trial Examiner's opinion that the remarks of Mattick above noted, in the context

[16] "[W]itch doctor" obviously refers to the Union.

of the Respondent's antiunion campaign,[17] interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act. In his remarks Mattick went beyond the permissible conduct allowed by Section 8 (c) of the Act. Mattick promised the benefits of expanded operations without the Union and threatened a curtailment of operations if the Union were selected as bargaining agent.[18]

The Trial Examiner has found that the Respondent interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act during the critical election period. Hence, the Trial Examiner finds that objections to the election should be sustained and a second election directed.[19]

V. The effect of the unfair labor practices upon commerce.

The activities of Respondent set forth in sections III and IV above, occurring in connection with its operations set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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[17] In the closing paragraph of a letter sent to employees on February 14, 1966, signed by Mattick, the employees were advised, "There is opportunity ahead for us, if we work together. Let's keep the record clean. So—*VOTE NO*—when the time comes."

[18] "When statements such as these are made by one who is a part of the company management, and who has the power to change prophecies into realities, such statements, whether couched in language of probability or certainty, tend to impede and coerce employees in their right of self organization, and therefore constitute unfair labor practices." *N. L. R. B. v. Nabors*, 196 F. 2d 272, 276 (C. A. 5).

[19] "Conduct violative of Section 8 (a) (1) is *a fortiori* conduct which interferes with the exercise of free choice in an election." *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786.

VI. The remedy.

It having been found that the Respondent has engaged in certain unfair labor practices, it is recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

In the instant case objectionable conduct tended to cause employees to believe that if the Union were chosen as the bargaining agent, the employer might close its plant resulting in the loss of jobs. Employees were told that the employer's plans in respect to the future expansion of its Humboldt facilities depended upon a rejection of the Union. With these thoughts in mind employees were unable to freely choose a bargaining agent under the laboratory conditions to which the Board aspires. Thus, in order to contribute to such laboratory conditions and remove any employee's doubts, the Trial Examiner recommends that in the Notice marked Appendix there appear "We disavow any claim, assertion or implication that, if the International Association of Machinists and Aerospace workers, AFL-CIO, or any other union is chosen as our employees' bargaining agent, we will for such reason, close our Humboldt plant or curtail any plans for the expansion of our Humboldt plant."

Conclusions of Law.

1. General Metal Products Company is an employer within the meaning of Section 2 (2) of the Act and is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of the Act.

3. By interfering with, restraining and coercing its employees in the exercise of rights guaranteed by Section 7

of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The Respondent unlawfully interfered with the representation election conducted on February 18, 1966.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommended Order.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case, it is recommended that Respondent, its officers, agents, successors and assigns shall:

(1) Cease and desist from:

(a) Threatening employees with reprisals to discourage their affiliation with or support of any labor organization; interrogating employees concerning union activities or affiliations; or aiding, abetting, assisting, or cooperating with any outside group of local citizens or businessmen in any campaign designed to interfere with, restrain or coerce its employees in the exercise of their rights to self-organization.

(b) In any other manner, interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization to join or assist International Association of Machinists and Aerospace Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. To take the following action which is necessary to effectuate the policies of the Act:

(a) Post at its place of business in Humboldt, Tennessee, copies of the attached notice marked "Appendix."[20] Copies of such notice, to be furnished by the Regional Director for the Twenty-sixth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 26, in writing within 10 days from the date of this decision, what steps the Respondent has taken to comply therewith.[21]

It is recommended that the election heretofore held on February 18, 1966, be vacated and set aside and that a second election be directed.

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[20] In the event that this Recommended Order be adopted by the Board, the words, "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of the United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[21] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

It is further recommended that the complaint be dismissed insofar as it alleges violations of the Act other than those in this decision.[22]

Dated at Washington, D. C., Nov. 4, 1966.

/s/ Lowell M. Goerlich,
Lowell M. Goerlich,
Trial Examiner.

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[22] At the close of the General Counsel's case, the Respondent moved to dismiss Paragraph 9 of the Complaint on the ground that the General Counsel had adduced no evidence in support thereof. The Trial Examiner reserved ruling on the motion. The motion is granted on the ground stated. It is the opinion of the Trial Examiner, that in the face of the Respondent's Motion to Dismiss, the General Counsel may not rely upon the Respondent's Exhibits to sustain his complaint.

APPENDIX.

Form NLRB-4634A
(11-65)

TXD-653-66

Notice to All Employees

Pursuant to
the Recommended Order of a Trial Examiner of the
National Labor Relations Board
and in order to effectuate the policies of the
National Labor Relations Act
(as amended)

we hereby notify our employees that:

WE DISAVOW any claim, assertion or implication that, if the INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, or any other union is chosen as our employees' bargaining agent, WE WILL for such reason, close our Humboldt plant or curtail any plans for the expansion of our Humboldt plant.

WE WILL NOT interrogate our employees regarding their union membership, sympathies or activities in a manner violative of Section 8 (a) (1) of the Act.

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities.

All our employees are free to become or remain or to refrain from becoming or remaining members in good standing of INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, or any other labor organization.

General Metal Products Company
(Employer)

Dated: ..... By: .....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 746 Federal Office Building, 167 North Main Street, Memphis, Tennessee 38103.

No. 257

JUL 18 1969

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1969

GENERAL METAL PRODUCTS COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-2) is not yet officially reported. The Board's decision and order (Pet. App. A-9) are reported at 164 NLRB No. 1.

JURISDICTION

The court of appeals entered its decree on April 11, 1969 (Pet. 1). The petition for a writ of certiorari was filed on June 19, 1969. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at page A-1 of the appendix to the petition.

QUESTION PRESENTED

Whether substantial evidence supports the finding of the National Labor Relations Board that the employer and its agents interfered with, restrained and coerced employees in violation of Section 8(a)(1) of the National Labor Relations Act.

STATEMENT

Early in 1965, General Metal Products Company (hereafter "the Company"), whose main offices are in St. Louis, Missouri, established a branch plant in Humboldt, Tennessee. Frank Warmath, a prominent Humboldt lawyer and businessman, had urged the Company to locate in the town, had negotiated with its management about acquisition of the plant site (in which he had a financial interest), and had consulted with and advised the Company about the opening and development of the plant (J.A. 7a; 63a-65a, 99a-100a).[1]

Sometime during the winter of 1965-1966, the International Association of Machinists and Aerospace Workers, AFL-CIO, began an organizing campaign at the Company's Humboldt plant (J.A. 2a; 47a-48a).

[1] "J.A." refers to the joint appendix to the briefs in the court below. References preceding a semicolon are to the Board's findings; those following are to supporting evidence.

Thereafter, Company officials traveled from St. Louis to Humboldt frequently, meeting with Warmath each time they were in town (J.A. 13a; 65a, 70a-71a). The union campaign was discussed at several of these meetings, and the Company informed Warmath that "they didn't want the Union down there" (J.S. 13a; 67a). Warmath, in turn, assured the Company that he "was very interested in not seeing anything take place" and discussed "who the workers were" (J.A. 13a; 70a-71a, 75a-76a). Warmath also discussed the union campaign and ways to defeat the Union with his business associates, including his law partner (G. Griffin Boyte), his real estate partner (Robert L. White), the manager of the bank of which he was chairman of the board (Annie Lou Cox), and a local grocer and politician (Otis Milligan) (J.A. 12a; 73a-74a).

On January 25, 1966, the Union filed a petition for an election with the Board's regional office. On February 8, officials of the Company, representatives of the Union, and Warmath met there and signed a Stipulation for Certification upon Consent Election, scheduling an election for February 18. (J.A. 2a; 47a-48a, 96a).

On February 10, employee Danny Porter visited the Mayor of Humboldt to complain about an "unreasonable" traffic ticket. The Mayor called Warmath on the telephone and handed the telephone to Porter; Warmath instructed Porter to drop by his office the next day. Porter did so, and Warmath opened the meeting by asking how the Union would fare in the election. When Porter answered that he thought the

Union would win, Warmath responded, "Oh, we don't need a Union out there," adding that the plant had lost money. He then told Porter that he had "fixed" his traffic ticket. As Porter thanked him and started to leave, Warmath said, "Well, I did you a favor. Now, I believe you can do me one." (J.A. 8; 43a-44a.)

In the middle of February, White (Warmath's real estate partner) and Cox (the manager of the bank) telephoned employee Terry Stevens. White told Stevens that he "didn't think the Company was ready for a Union and would appreciate it if [Stevens] would * * * not vote for it." Cox remarked that she had heard the employees were having an election, that she thought the Company was not ready for a union, and that she would like to influence Stevens "in any way she could" not to vote for the Union. (J.A. 9a-10a; 45a-46a.)

Warmath asked Otis Milligan to find out "what [the employees] was wanting." On February 15, Milligan visited employee Cross and told him "they sent him * * * to talk * * * about the Union." Milligan and Cross discussed some of the employees' complaints, and Milligan asked if the employees would be willing to postpone the election until a few months later, when it might be more agreeable to the Company. He explained that "they" were "very concerned" that, if the Union won the election, the Company "might move out, go back to St. Louis or go to some other town." He asked how Cross felt about the Union, but Cross replied that he had not yet made up his mind. Milligan reported this conversation back to Warmath. (J.A. 10a-11a; 34a-35a, 92a-94a.)

The next day, Cox telephoned Cross's home and told Mrs. Cross that she was calling because "they were concerned" about the Union, that "there was a possibility that they would lose the Company if the Union should come out there," and that she would like Mrs. Cross to try to influence her husband against voting for the Union. When Mrs. Cross responded that this was a decision for her husband to make, Cox said, "Well, I would like for Jack to come to my office and talk face to face to me concerning this." Cross decided not to talk to Cox. (J.A. 10a; 36a-37a.)

That same day, employee Vernon Bolin received a message from the plant's administration office to call Warmath's law partner, Boyte. When he did so, Boyte asked Bolin to meet him at his office and "have a little talk." Bolin went to Boyte's office after work, and Boyte opened the conversation by saying, "Vernon, I'll get to the point with you. I'm deeply concerned about this Union out at General Metals." He asked why the men wanted a Union, and Bolin detailed the employees' complaints. Boyte responded, "That still don't mean that we need a Union out there," and proceeded to explain that when another company had moved its Humboldt plant to Texas, "[t]he men lost their cars [and] their homes." Boyte said he wanted to talk to some of the people out at General Metals and that he might want to speak to Bolin again. (J.A. 8a-9a; 48a-49a.)

Also on February 16, Plant Superintendent Raymond Stevens approached employee Billie Ray Williams and asked him what he thought about the Union. Williams complained about the lack of soap in the

washing facilities, and Stevens replied, "Well, a bar of soap every month would be cheaper than paying Union dues and fines for not attending meetings." (J.A. 6a; 46a-47a.)

Finally, Company President Mattick assembled the employees on that day and delivered a speech from a prepared text. He referred to the "decision you'll make on February 18," and said that the issue was "simply this—employee and company can no longer continue to progress on the path that they follow, but now need a witch doctor to help us to continue the forward movement." After discussing the Company's policy of promotion from within the ranks, and pointing out its future growth possibilities, he warned that the employees should not "trod on this opportunity" or "destroy those goals that lie ahead." He further asserted that "a witch doctor * * * cannot supplant cooperation, working and planning together," and that the plant did not need one. Mattick concluded by reminding the employees that their vote would determine "how fast Plant #2 will change from a branch plant to something else * * *." (J.A. 17a; 133a-137a.)

Two days later, the employees rejected the Union by vote of 14 to 8, with 3 challenged ballots (J.A. 2a).

The Board found that the threats of the townspeople concerning the fate of the plant in the event of unionization, the interrogations of employees by Company officials, and the speech by Company President Mattick constituted a pattern of unlawful coercion to prevent the employees from voting for the Union in the election, and thus violated Section 8(a)(1) of the Act. In holding the Company accountable for so

much of the coercive conduct as was committed by Warmath and his associates, the Board relied upon the relationship between him and the newly established plant, Warmath's admission that he had obtained the names of employees from Company, his visits to the plant and presence at the meeting at which the parties agreed to hold a consent election, and, finally, the similarity of the approaches taken by all of the persons involved in the attempt to defeat the union campaign. (Pet. App. A10-A11, A18-A30.) The Board ordered the Company to cease and desist from its unlawful activities and to post appropriate notices. The Board also ordered that the election be set aside and a new one conducted. (Pet. App. A12-A13, A32-A33.) The court of appeals sustained the Board's findings and enforced its order (Pet. App. A2-A8).

ARGUMENT

Petitioner does not challenge the principle that an employer can be held responsible for the activities of others when they are carried on with its knowledge, acquiescence, and approval. Nor does it deny that an employer or its agents may not coercively interrogate employees concerning their union activities, or threaten them with reprisals for engaging in such activities.[2] Its only contention is that the Board erred in

[2] As petitioner points out (Pet. 13), the test set forth in *Bourne* v. *National Labor Relations Board*, 332 F. 2d 47 (C.A. 2), is appropriate to determine whether an employer's interrogation of employees, absent threats, is unlawful. The interrogation engaged in by petitioner in the instant case clearly meets this test. The rest of the conduct involved

finding that it did in fact know, approve, and acquiesce in the activities of Warmath and his associates, and that both it and the townspeople did in fact engage in the activities outlined above. Such evidentiary issues do not warrant further review. In any event, the evidence summarized in the Statement amply supports the Board's findings on these points.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DOMINICK L. MANOLI,
Associate General Counsel,

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Assistant General Counsel,

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JULY 1969.

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consists of statements which could properly be found to constitute outright threats of reprisal under the test set forth in *National Labor Relations Board* v. *Gissel Packing Co.*, Nos. 573, 691, 585, decided June 16, 1969, slip op., pp. 40-43.

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